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individuals save their text messages. Further, it is believed that no other individual has been either fired or disciplined for the destruction of text messages with Mo Carrasco.

Defendant has not identified one witness who it claims will testify that Plaintiff would have been fired during the course of the investigation for destroying these text messages months after the investigation ended. (Ex. 1; Discovery Responses). If Defendant had wanted the text messages, they should have asked for them in the investigation. Michael Taylor, the investigator from the Metropolitan Government of Nashville, testified that he did not tell anyone that he needed the text messages between Carrasco and the various witnesses. Taylor testified he had enough information by a preponderance of the evidence without the text messages. He was not aware of anyone from Metro requesting the witnesses save their text messages. (Ex. 2; Taylor Depo. pp. 62-64).

To rely on the “after acquired evidence” doctrine, the Defendant “must first establish that the wrongdoing was of such severity that the employee in fact would have been terminated on those grounds alone if the employer had known of it at the time of the discharge”. *McKennon v. Nashville Banner Publ. Co.*, 513 U.S. 352, 362-363, 115 S.Ct. 879, 886-887 (1995). This is an impossible burden for Defendant to meet because it never requested the text messages from Plaintiff or requested the messages be saved.

Plaintiff respectfully requests that Defendant be precluded from making this argument or offering evidence as to this argument.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 27, 2019, a copy of Plaintiff's Brief and Memorandum of Law in Support of Plaintiff's Motion in Limine - III was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt as follows: Charles K. Grant, Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., Baker Donelson Center, 211 Commerce Street, Suite 800, Nashville, TN 37201, Sharonda Childs Fancher, Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., 1400 Wells Fargo Tower, 420 20th Street North, Birmingham, AL 35203, and Anne Bennett Hunter & Heather Moore Collins, Collins & Hunter, PLLC, 7000 Executive Center Drive, Suite 320, Brentwood, TN 37027. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's electronic filing system.

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